

West Virginia Division of Labor State Minimum Wage Requirements

West Virginia Division of Labor
Wage & Hour Section

Minimum Wage Fact Sheet 1 - West Virginia Code Chapter 21, Article 5C
(July 2016)

WEST VIRGINIA MINIMUM WAGE REQUIREMENTS

As of January 1, 2016, every *employer* shall pay to each of his or her covered *employees* a minimum hourly wage of not less than \$8.75 per hour. §21-5C-2(a)(5)

When does it apply: When an employer has six or more non-exempt employees working at any separate, distinct, and permanent work location in West Virginia.

Who does it apply to: To all non-exempt (hourly) employees working at any separate, distinct, and permanent work location where the employer has the required six or more non-exempt employees needed to establish state minimum wage jurisdiction.

EXEMPT VERSUS NON-EXEMPT WORKERS

When indicating an employee is exempt or non-exempt, you're actually stating whether that individual is exempt from, or covered by, state and/or federal minimum wage requirements. Once determined as exempt, such workers may receive a regular salary amount without consideration of state minimum wage requirements. However, those employees that are determined as non-exempt are considered hourly workers and entitled to receive the state minimum wage for all hours worked.

Determining a Worker's Exempt or Non-exempt Status

West Virginia's Minimum Wage & Maximum Hour Standards identify several categories of workers as exempt from the state minimum wage by excluding them from the definition of a covered "employee" as defined in §21-5C(1)(f)(1) as follows:

A covered employee does not include individuals employed by the United States; volunteers involved in educational, charitable, religious, fraternal or nonprofit activities where the employee/employer relationship does not exist; newsboys; shoeshine boys; golf caddies; pin-boys and pin chasers in bowling alleys; traveling salesmen and outside salesmen; services performed by an individual in the employ of his or her parent, son, daughter or spouse; professional, executive or administrative employees; individuals involved in on-the-job training (vocational); a handicapped individual working in a nonprofit sheltered workshop; individuals working in a boys or girls summer camp; any person 62 years of age or older receiving social security benefits; agricultural workers; state employed fire fighters; ushers in theaters; part time students working 24 hours or less; employees of local interurban motorbus carriers; any employee under federal DOT regulations; and those employed on a per diem basis by the West Virginia State Senate, House of Delegates, or the Joint Committee on Government and Finance.

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Administrative, Executive, and Professional Exemptions

Unlike the other categories of employee exemptions, in order to claim the administrative, executive, and professional exemptions other conditions must be met. One of those conditions includes a minimum salary amount. *See Minimum Wage Fact Sheets 4, 5, and 6.*

STATE VERSUS FEDERAL MINIMUM WAGE REQUIREMENTS

As the state minimum wage requirement is currently higher than the federal, any employee that is determined as being covered by both the state and federal minimum wage is entitled to payment of the state minimum wage. Since the state requirement is set by law to automatically increase along with any federal increase that may occur in the future, West Virginia's minimum wage requirement will always remain equal to, or higher than, the federal minimum wage.